IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 26.10.2007

CORAM:

THE HONOURABLE MR.JUSTICE K. MOHAN RAM

Crl.O.P.Nos.18577 and 18712 of 2007
and M.P.Nos.1, 1, 2, 3 and 3 of 2007

Mrs. S.Valliammal .. Petitioner in both the Crl.O.Ps.

-Vs.-

1. Omprakash

2. Sree Uma Parameswari Mills Limited
Rep. by its Managing Director, Mr.K.R.Subramaniam
Ramji Nagar, Tiruchirapalli - 620 009

3. Dr. R.Subramaniam
Chairman,Sree Uma Parameswari Mills Limited,
243-A, Fourth Cross, Brindavan Road,
Fairlands, Salem - 636 001

4. K.R.Subramanian
Managing Director
Sree Uma Parameswari Mills Limited,
243-A, Fourth Cross, Brindavan Road,
Fairlands, Salem - 636 001 .. Respondents in Crl.O.P.No.18577 of 2007

1. Mr. Pahilaj K.Kalra
Rep. by his Power of Attorney Holder and Manager
Mr. E.M.Elango
2. Sree Uma Parameswari Mills Limited
Rep. by its Managing Director, Mr.K.R.Subramaniam
Ramji Nagar, Tiruchirapalli - 620 009
3. Mr.K.R.Subramaniam
4. Dr. R.Subramaniam
Director
Sree Uma Parameswari Mills Limited,
243-A, Fourth Cross, Brindavan Road,
Fairlands, Salem - 636 001 .. Respondents in Crl.O.P.No.18712 of 2007

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Prayer in Crl.O.P.No.18577 of 2007: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and to quash the complaint in C.C.No.1808 of 2006 on the file of the Judicial Magistrate No.IV, Salem, in so far as the petitioner is concerned.

Prayer in Crl.O.P.No.18712 of 2007: Petition filed under Section 482 of the Code of Criminal Procedure to call for the records and to quash the complaint in C.C.No.481 of 2006 on the file of the Judicial Magistrate No.II, Erode, in so far as the petitioner is concerned.

For Petitioner in both the Crl.O.Ps. : Mr. K.Rajasekaran
For Respondents in both the Crl.O.Ps : Mr. N.Manokaran

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C O M M O N O R D E R

The above criminal original petitions have been filed under Section 482 of the Criminal Procedure Code to quash all further proceedings in C.C.No.1808 of 2006 on the file of the Judicial Magistrate No.IV, Salem and C.C.No.481 of 2006 on the file of the Judicial Magistrate No.II, Erode.

2. Though the petitioner in the above criminal original petitions is same, the respondents are different. Since the issue that arises for consideration in both the above criminal original petitions is one and the same both the criminal original petitions are being disposed of by a common order.

3. The brief facts that are necessary for the disposal of the Criminal Original Petition No.18577 of 2007 are set-out below:-

On a complaint given by one Omprakash-the first respondent in criminal original petition No.18577 of 2007 alleging that the petitioner and respondents 3 and 4 as directors of the second respondent-company borrowed a sum of Rs.1,00,000/- from the complainant and the third respondent as the Managing Director of the second respondent issued a cheque for a sum of Rs.1,00,000/- to discharge the said liability and the cheque when presented for encashment was dishonoured and inspite of written demand made by the complainant the amount covered by the dishonoured cheque was not paid and as such all the accused have committed an offence punishable under Section 138 of the Negotiable Instruments Act. It is further alleged in the complaint that the petitioner has directly and actually, physically, mentally taking active part in running of the company.

4. Similarly, the brief facts that are necessary for the disposal of the Criminal Original Petition No.18712 of 2007 are set-out below:-

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On a complaint given by one Pahilaj K.Kalra-the first respondent in criminal original petition No.18712 of 2007 alleging that the petitioner and respondents 3 and 4 as directors of the second respondent-company borrowed a sum of Rs.1,00,000/- from the complainant and the third respondent as the Managing Director of the second respondent issued a cheque for a sum of Rs.1,00,000/- to discharge the said liability and the cheque when presented for encashment was dishonoured and inspite of written demand made by the complainant the amount covered by the dishonoured cheque was not paid and as such all the accused have committed an offence punishable under Section 138 of the Negotiable Instruments Act. It is further alleged in the complaint that the petitioner has taken active part of day-to-day business affairs and personal involvement of all the business transaction of the company.

5. The petitioner who is the fourth accused in the above two criminal original petitions has filed the above criminal original petitions as aforesaid for quashing the proceedings on the ground that she has resigned from the Directorship as early as 24.09.1999 and the company has also filed Form-32 to effect necessary changes in the Register before the Registrar of Companies, Coimbatore, on 14.10.1999 and evidencing the same, the certified copy of Form-32 issued by the Registrar of Companies has also been produced.

6. Heard Mr. K.Rajasekaran learned counsel for the petitioner in each petitions and Mr. N.manokaran learned counsel for the respondents in each petitions.

7. Mr. K.Rajasekaran learned counsel for the petitioner in each petitions by relying upon the decision of this Court reported in 2001 (2) C.T.C. 78 (Ashok Muthanna Managing Dirt. M/s. Fidelity Industries Ltd. v. Wipro Finance Ltd.,) wherein in paragraphs 5 and 7 it is observed as follows:-

> "5. Though the said document is not form part of the complaint and other records accompanied with the complaint, this can be taken into consideration by this Court, since the contents of the said document, which is a public document, is not disputed by the learned counsel for the respondent.
>
> 6. ....
> 7. In the present case, as noted above, the document Form No.32 would reveal that the second petitioner was not the director who was in-charge of and responsible for the affairs of the company during the relevant period and as such, the proceedings as against the second petitioner are liable to be quashed and accordingly, quashed".

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submitted that since Form-32 produced by the petitioner shows that the petitioner had resigned from the Directorship of the first accused-company as early as 24.09.1999 and Form-32 has been filed and the same has been entered in the Register and as Form-32 is a public document, this Court can accept the same and quash the proceedings. Learned counsel further relied upon another decision of the Apex Court reported in AIR 2005 Supreme Court 359 (State of Orissa v. Debendra Nath Padhi) wherein in the said decision, the Apex Court in paragraphs 20 and 21 has observed as follows:-

> "20. Reliance placed on behalf of the accused on some observations made in Minakshi Bala v. Sudhir Kumar and others ((1994) 4 SCC 142) to the effect that in exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence is misplaced for the purpose of considering the point in issue in these matters. If para 7 of the judgment where these observations have been made is read as a whole, it would be clear that the judgment instead of supporting the contention sought to be put forth on behalf of the accused, in fact, supports the prosecution. Para 7 of the aforesaid case reads as under:-
>
> > "If charges are framed in accordance with Section 240, Cr P C on a finding that a prima facie case has been made out - as has been done in the instant case - the persons arraigned may, if he feels aggrieved, invoke the revisional jurisdiction of the High Court or the Sessions Judge to contend that the charge-sheet submitted under Section 173 Cr P C and documents sent with it did not disclose any ground to presume that he had committed any offence for which he is charged and the revisional Court if so satisfied can quash the charges framed against him. To put it differently, once charges are framed under Section 240, Cr P C the High Court in its revisional jurisdiction would not be justified in relying upon documents other than those referred to in Sections 239 and 240, Cr P C to quash the same except in those rare cases where forensic exigencies and formidable compulsions justify such a course. We hasten to add even in such exceptional cases the High Court can look into only those documents which are unimpeachable and can be legally translated into relevant evidence".
> >
> > 21. .... In the present case, however, the question involved is not about the exercise of jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing".

Basing reliance on the above said observations of the Apex Court, the learned counsel for the petitioner in each petitions submitted that the certified copy of Form-32 produced by the petitioner being a document

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which is unimpeachable and can be legally translated into relevant evidence should be accepted by this Court and all further proceedings in both the cases as far as this petitioner is concerned should be quashed as otherwise it will result in miscarriage of justice. Learned counsel further submitted that the genuineness of Form-32 produced by the petitioner is not disputed by the respondents.

8. Countering the said submissions Mr.N.Manokaran learned counsel for the respondents submitted that the petitioner cannot be allowed to produce Form-32 at this stage and seek quashing of the proceedings pending before the Courts below; the petitioner can only produce the document during the course of trial and then seek acquittal. In support of his contention the learned counsel relied upon a decision of the Apex Court reported in (2007) 5 Supreme Court Cases 108 (N.Rangachari v. Bharat Sanchar Nigam Ltd.). In the said decision the Apex Court in paragraphs 26 and 27 has observed as follows:-

> "26. In the case on hand, reading the complaint as a whole, it is clear that the allegations in the complaint are that at the time at which the two dishonoured cheques were issued by the Company, the appellant and another were the Directors of the Company and were in charge of the affairs of the Company. It is not proper to split hairs in reading the complaint so as to come to a conclusion that the allegations as a whole are not sufficient to show that at the relevant point of time the appellant and the other are not alleged to be persons in charge of the affairs of the Company. Obviously, the complaint refers to the point of time when the two cheques were issued, their presentment, dishonour and failure to pay inspite of notice of dishonour. We have no hesitation in overruling the argument in that behalf by the learned senior counsel for the appellant.
>
> 27. We think that, in the circumstances, the High Court has rightly come to the conclusion that it is not a fit case for exercise of jurisdiction under Section 482 of the Code of Criminal Procedure for quashing the complaint. In fact, an advertence to Sections 138 and 141 of the Negotiable Instruments Act shows that on the other elements of an offence under Section 138 being satisfied, the burden is on the Board of Directors or the officers in charge of the affairs of the company to show that they are not liable to be convicted. Any restriction on their power or existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not in charge of the affairs of the Company. Reading the complaint as a whole, we are satisfied that it is a case where the contentions sought to be raised by the appellant can only be dealt with after the conclusion (sic commencement) of the trial".

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Basing reliance on the above said observation of the Apex Court the learned counsel submitted that the factum of resignation of the petitioner from the Directorship of the first accused-company is within the knowledge of the petitioner and as such the same should be raised and proved only before the trial court by producing the relevant document. Learned counsel further submitted that though the complaint was filed as early as 17.08.2004 the above criminal original petitions have been filed only on 28.06.2007 and as such criminal original petitions should be dismissed on the ground of delay and latches.

9. I have carefully considered the above said submissions made by the learned counsel on either side.

10. In the decision reported in (2007) 5 S.C.C. 108 (referred to supra) in paragraph 27 the Apex Court has observed that the existence of any special circumstance that makes them not liable is something that is peculiarly within their knowledge and it is for them to establish at the trial such a restriction or to show that at the relevant time they were not in charge of the affairs of the Company. Much reliance was sought to be placed on the above said observation of the Apex Court by the learned counsel for the first respondent. The fact that the petitioner has resigned from the Directorship of the first accused-company, such resignation had been brought to the notice of the Registrar of Companies and the same is reflected in Form-32 and the certified copy of Form-32 has been produced are not in dispute. As rightly contended by the learned counsel for the petitioner the genuineness of Form-32 produced by the petitioner is not in question. It is also not disputed that Form-32 is a public document. When it is admitted that Form-32 is a public document, it cannot be said that the resignation of the petitioner from the company is a special circumstance, which is within the exclusive knowledge of the petitioner.

11. It is pertinent to point out that it is incumbent on the part of the complainant before filing the complaint alleging that the fourth accused, the petitioner herein, is a Director of the first accused-company to have verified Form-32. Simply because the complainant in the complaint has alleged that the petitioner is one of the Directors of the first accused-company and she was incharge of and responsible for the conduct of the business of the company the same cannot make the petitioner liable for prosecution, when Form-32 clearly establishes that she had already resigned from the Directorship of company as early as 24.09.1999 and evidencing the same Form-32 has been filed with the Registrar of Companies and certified copy of the same has also been produced. When Form-32 which is an unimpeachable document of sterling quality and whose genuineness is not disputed has been produced before this Court, it will be perversity of justice to direct the petitioner to face the trial and prove her case.

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12. In the decision reported in AIR 2005 Supreme Court 359 (referred to supra) the Apex Court after referring to the decision reported in (1994) 4 S.C.C. 142 (referred to supra) has observed as follows:-

> "In the present case, however, the question involved is not about the exercise of jurisdiction under Section 482 of the Code where along with the petition the accused may file unimpeachable evidence of sterling quality and on that basis seek quashing"

The above passage makes it abundantly clear that in the petition filed under Section 482 of the Criminal Procedure Code seeking to quash the proceedings if the accused filed an unimpeachable evidence of sterling quality, such evidence can be accepted and proceedings can be quashed. As held in the decision reported in (2001) 2 C.T.C. 78 (referred to supra) Form-32 is a public document.

13. As pointed out above, the genuineness of the certified copy of Form-32 produced by the petitioner is not in dispute. Therefore, if by accepting the contention of the learned counsel for the respondents the petitioner is directed to produce Form-32 before the trial court and seek acquittal it will amount to perversity of justice.

14. Section 482 of the Criminal Procedure Code is meant to secure the ends of justice. Therefore, this is a fit case to invoke the provisions contained in Section 482 of the Criminal Procedure Code especially to secure the ends of justice. Accordingly, the above criminal original petitions are allowed. All further proceedings in C.C.No.1808 of 2006 on the file of the Judicial Magistrate No.IV, Salem and C.C.No.481 of 2006 on the file of the Judicial Magistrate No.II, Erode, are hereby quashed so far as the petitioner is concerned.

15. At this stage the learned counsel for the respondents submitted that a direction may be issued to the learned Judicial Magistrate No.IV, Salem and the learned Judicial Magistrate No.II, Erode to dispose of the cases within a specified date.

16. Since as rightly submitted by the learned counsel for the respondents, the complaint came to be filed as early as on 17.08.2004 in the interest of justice, the Courts below are directed to dispose of the

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cases as expeditiously as possible and more preferably within a period of two months from the date of receipt of a copy of this order. The connected MPs are closed.

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Sd/
Asst. Registrar

/true copy/

Sub Asst.Registrar

To
1. The Judicial Magistrate No.IV, Salem.
2. -do- thro the Chief Judicial Magistrate, Salem.
3. the Judicial magistrate -II, Erode.
4.-do- thro The Chief Judicial Magistrate, Erode.
+ 2 ccs to Mr. N. Manokaran, Advocate SR 64824,64858
+ 2 ccs to Mr. K. Rajasekaran, Advocate SR 65285, 65284
SR (co)
sg 06/11/07

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